

ARTICLES OF CAFTA-DR'S INTELLECTUAL PROPERTY CHAPTER DECLARED AS UNCONSTITUTIONAL

On May 29th of 2015, the Constitutional Chamber of the Supreme Court of Justice, issued a decision declaring as unconstitutional articles 15.1.5 (a) 4th sentence and 15.9.2 3rd sentence of the Central America, Dominican Republic- United States of America Free Trade Agreement, for the violation of Articles 86 paragraph 1º and 2º, 131 ordinal 5th and 7th, and 146 of the Constitution of the Republic of El Salvador.

The decision arises from four lawsuits filed in 2006 that were accumulated in a single process, where 21 reasons of unconstitutionality were claimed. Only 2 of these reasons were accepted by the Board, declaring the unconstitutionality of the articles for limiting the scope of action of Congress to ratify or not, other international treaties, and prevent them to repeal laws in certain matters.

Article 15.1.5 (a), 4th sentence, provided an obligation for State Parties to ratify or accede to the International Union for the Protection of New Varieties of Plants (UPOV Convention), but the Supreme Court considered that it violates the constitutional power of Congress to ratify treaties.

Regarding Article 15.9.2, 3rd phrase, from the Patent chapter, provided that "Any Party that grants patent protection for plants or animals, or that determines to grant it after the entry into force of this Agreement shall maintain such protection". The Supreme Court considered that this obligation without the possibility to amend laws related to patent protection for plants or animals violates articles 131, 5th ordinal, of the Constitution, because it limits the powers of the Legislative Assembly to repeal or ratify secondary laws that may even extend protection in this area.

Please feel free to contact us should you require any further information on this matter.

MORENA ZAVALETA

Partner

morena.zavaleta@ariaslaw.com